

STATE OF INDIANA ) IN THE MARION CIRCUIT/SUPERIOR COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO. \_\_\_\_\_

STATE OF INDIANA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MARK ROBBINS, )  
individually and doing business as )  
MARK ROBBINS ROOFING- )  
SIDING-GUTTERS, )  
 )  
Defendant. )

49D10 08 01 PL 001935

**FILED**  
JAN 15 2008 (201)  
Charlith L. White  
CLERK OF THE MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,  
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Amber Degenhart, petitions the Court pursuant to the Indiana Home Improvement Contracts Act, Indiana Code § 24-5-11-1, *et seq.* and the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.

2. The Defendant, Mark Robbins, individually and doing business as Mark Robbins Roofing-Siding-Gutters, at all times relevant to this complaint, was an individual engaged in business as a home improvement contractor and solicited consumers from his principal place of

business in Marion County, located at 2138 East 62<sup>nd</sup> Street, Suite 139, Indianapolis, Indiana 46220.

### FACTS

3. At least since December 1, 2006, the Defendant has entered into home improvement contracts with Indiana consumers.

#### **A. Allegations regarding Stephen and Sharon Davis**

4. On or about December 1, 2006, the Defendant entered into a contract with Steven and Sharon Davis of Indianapolis, Indiana, wherein the Defendant represented he would replace the Davises' roof for the full amount of their insurance proceeds. On that date, the Davises paid One Thousand Four Hundred Eighty-Eight Dollars and Sixty-Eight Cents (\$1,488.68) towards that contract. On April 25, 2007, the Davises paid the Defendant the remaining Four Thousand Sixty-Two Dollars and Ninety-Two Cents (\$4,062.92). A true and correct copy of the Defendant's contract with the Davises is attached and incorporated by reference as Exhibit "A."

5. The Defendant failed to include the following information in the contract with Stephen and Sharon Davis:

- a. any time limitation on acceptance of the contract;
- b. a reasonably detailed description of the home improvement, or a statement that the subject real estate would be restored to the same or a comparable condition;
- c. the approximate starting and completion dates of the home improvements, or an approximate timeframe that would begin after approval by the insurance carrier;

- d. a statement of contingencies that might materially change the completion date;  
and
- e. a legible printed or typed version of the consumer's name placed directly after  
or below their signature.

6. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contract formation he would complete the job within a reasonable period of time.

7. On or about June 4, 2007, the Defendant sent the Davises a letter stating that if the roof work was not completed in four (4) weeks, he would refund Seven Hundred Fifty Dollars (\$750.00). If the work was not completed in eight (8) weeks, he would refund them an additional Seven Hundred Fifty Dollars (\$750.00), for a total refund of One Thousand Five Hundred Dollars (\$1,500.00).

8. The Defendant has failed to begin the home improvement or provide the promised refund to the Davises.

**B. Allegations regarding William McCotter**

9. On or about February 22, 2007, the Defendant entered into a contract with William McCotter of Indianapolis, Indiana, wherein the Defendant represented he would repair McCotter's roof for the full amount of McCotter's insurance proceeds. On or about March 26, 2007, McCotter paid the Defendant Seven Thousand Dollars (\$7,000.00) as a down payment on the contract. A true and correct copy of the Defendant's contract with McCotter is attached and incorporated by reference as Exhibit "B."

10. The Defendant failed to include the following information in the contract with McCotter:

- a. the approximate starting and completion dates of the home improvements, or an approximate timeframe that would begin after approval by the insurance carrier;
- b. a statement of contingencies that might materially change the completion date; and
- c. the consumer's signature, and a legible printed or typed version of the consumer's name placed directly after or below their signature.

11. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contract formation he would complete the job within a reasonable period of time.

12. On or about June 7, 2007, the Defendant sent a letter to McCotter. The Defendant offered to pay McCotter's Five Hundred Dollar (\$500.00) deductible due to the delay. Defendant also stated that if the work was not completed within four (4) weeks, he would refund an additional Five Hundred Dollars (\$500.00). If the work was not completed with eight (8) weeks, he would refund an additional Five Hundred Dollars (\$500.00), for a total refund of One Thousand Five Hundred Dollars (\$1,500.00).

13. Defendant has failed to begin the home improvement or provide the promise refund to McCotter.

#### COUNT I: VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

14. The services described in paragraph 4 and 9 are "home improvements" as defined by Ind. Code § 24-5-11-3.

15. The transactions referred to in paragraph 4 and 9 are "home improvement contracts" as defined by Ind. Code § 24-5-11-4.

16. The Defendant is a “supplier” as defined by Ind. Code § 24-5-11-6.

17. By failing to provide consumers with completed home improvement contracts, as referenced in paragraphs 5 and 10, the Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

COUNT II: VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

18. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 17 above.

19. The transactions referred to in paragraphs 4 and 9 are “consumer transactions”, as defined by Ind. Code § 24-5-0.5-2(a)(1).

20. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

21. The Defendant’s violations of the Indiana Home Improvement Contracts Act, referred to in paragraphs 5 and 10, constitute deceptive acts by the Defendant in accordance with Ind. Code § 24-5-11-14.

22. The Defendant’s representations to consumers that the subjects of the consumer transaction had characteristics or benefits they did not have, which the Defendant knew or reasonably should have known the transactions did not have, as referenced in paragraphs 4 and 9, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

23. The Defendant’s representations to consumers that he would provide a refund, which the Defendant knew or reasonably should have known he would not provide, as referenced in paragraphs 7 and 12, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

24. The Defendant’s representations to consumers that he would be able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the

Defendant knew or reasonably should have known he could not, as referenced in paragraphs 6, 7, 11, and 12 constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS  
OF THE DECEPTIVE CONSUMER SALES ACT**

25. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 24 above.

26. The misrepresentations and deceptive acts set forth in paragraphs 4-7 and 9-12 above were committed by the Defendant with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, enjoining the Defendant from the following:

- a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:
  - i) The name of the consumer and the address of the residential property that is the subject of the home improvement;
  - ii) The name and address of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
  - iii) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
  - iv) A reasonably detailed description of the proposed home improvements;

- v) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
  - vi) The approximate starting and completion date of the home improvements;
  - vii) A statement of any contingencies that would materially change the approximate completion date;
  - viii) The home improvement contract price; and
  - ix) Signature lines for the Defendant or the Defendant's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;
  - c. representing, expressly or by implication, that the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;
  - d. representing, expressly or by implication, that the subject of a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or

- other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false; and
- e. representing, expressly or by implication, that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. cancellation of the Defendant's unlawful contracts with all consumers, including, but not limited to, Stephen & Sharon Davis and William McCotter, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendant for home improvements, including, but not limited to:
1. Stephen & Sharon Davis, in the amount of Five Thousand Five Hundred Fifty-One Dollars and Sixty Cents (\$5,551.60).
  2. William McCotter, in the amount of Seven Thousand Dollars (\$7,000.00).
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count III of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer




Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation,  
payable to the State of Indiana;

- e. on Count III of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code §  
24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer  
Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable  
to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Attorney N. 4150-64

By:

  
Amber Degenhart  
Deputy Attorney General  
Attorney No. 27079-49

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Indianapolis, IN 46204  
(317) 234-2623

442258





## Mark Robbins

ROOFING SIDING GUTTERS

2138 E. 62<sup>nd</sup> Street, Suite 139

Indianapolis, IN 46220

Phone 317-696-1476 Fax 317-251-9262

Homeowners Name NAT Mc. COTTER Date 2-22-07  
Home Phone # \_\_\_\_\_ Other Phone # \_\_\_\_\_  
Street Address \_\_\_\_\_  
City Indianapolis State IN Zip \_\_\_\_\_  
Insurance Company Buckeye Claim # \_\_\_\_\_

### Contingency Agreement for Insurance Hail Damage Claim

**The only cost to the Homeowner is their deductible. The balance is paid by the Homeowner's insurance company per final loss invoice.**

This proposal between the contractor Mark Robbins, and the Homeowner is contingent upon the Homeowners Insurance Company paying for the roof and will be void if the claim is denied. The Contractor agrees to invest time and expertise in assisting the Homeowner with the insurance claim. The Homeowner agrees for The Contractor to negotiate with the Insurance Company towards a fair and equitable settlement of this claim, and agrees to have The Contractor complete at least the roofing portion of this claim at the price paid by the Insurance Company. **If insurance denies claim, all deposits will be refunded to the homeowner in full. Deposit received: \$ \_\_\_\_\_**

When claim is approved, the Insurance Company will forward a check to the Homeowner which is to be used as additional deposit when it is received. No work will be scheduled by The Contractor until the claim is approved and this first payment from the insurance company is paid.

Supplements paid by the insurance company are for additional costs for labor and materials completed by The Contractor beyond the original scope of repairs and will be paid to The Contractor when they are received from the insurance company.

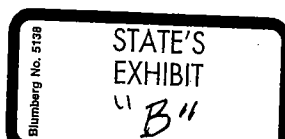
Overhead and Profit is often paid by insurance companies to contractors. Overhead and Profit is not the property of the Homeowner and will be paid to The Contractor when it is received from the insurance company.

**The Homeowner is not responsible for paying Supplements and Overhead and Profit unless they are approved by and paid to the Homeowner from the Insurance Company.**

Upgrades may be purchased by the Homeowner above what the insurance company agrees to pay for. The most common upgrade purchased is better roofing than what is currently on the home. Upgrades are not covered by insurance.

Acceptance of Proposal: The above specifications to this agreement are satisfactory and are hereby accepted.

X \_\_\_\_\_  
Homeowner



**Specifications and Agreement for Hail Damage work to be completed pending approval by Insurance.**

ADDITIONAL WORK DESCRIPTION: HALO DANCE - NESTING ROOSTING & CHATTERING - REMOVE TREE LIMBS FROM ROOST H/O. CLOVER & POWER SPORT ROOSTING

**Acceptance of Proposal:** The above specifications to this agreement are satisfactory and are hereby accepted. The Contractor is authorized to do the work as specified when approved by insurance.

## BUYERS RIGHT TO CANCEL

Signature 